

LET-10



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

JON W. BROWN, ET AL.

Serial No.: 09/955,750

Art Unit: 2643

Filed: September 18, 2001

Examiner: Ramakrishnaiah, Melur

For: METHODS AND SYSTEMS FOR
DYNAMICALLY SERVING IN-
STREAM ADVERTISEMENTS

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SUBMISSION UNDER 37 C.F.R. §3.73

Technology Center 2600

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith is a statement under 37 C.F.R. §3.73 establishing the right of the assignee to take action in the above-identified application.

If any fees are necessary to act upon this request, the Patent Office is authorized to charge Deposit Account No. 50-1390.

SHAW PITTMAN LLP
1650 Tysons Boulevard
McLean, VA 22102
Tel: 703/770-7900

Date: September 7, 2004

Respectfully submitted,

JON W. BROWN, ET AL.

By:


Lawrence D. Eisen
Registration No. 41,009

LDE/lrhj

Customer No. 28970

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PTO/SB/98 (08-03)

Approved for use through 07/31/2008. OMB 0851-0031
Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE**STATEMENT UNDER 37 CFR 3.73(b)**Applicant/Patent Owner: Jon W. BROWN, et al.Application No./Patent No.: 09/955,750 Filed/Issue Date: September 18, 2001Entitled: **METHODS AND SYSTEMS FOR DYNAMICALLY SERVING IN-STREAM ADVERTISEMENTS**

Loudeye Corp., a Corporation
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

- the assignee of the entire right, title, and interest; or
- an assignee of less than the entire right, title and interest.
The extent (by, percentage) of its ownership interest is _____ %
in the patent application/patent identified above by virtue of either:

A. An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

OR

B. A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

1. From: Activate.Net To: Loudeye Corp.
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.
2. From: Jon W. Brown and Frank Kemory To: Activate.Net
The document was recorded in the United States Patent and Trademark Office at
Reel 012638, Frame 0197, or for which a copy thereof is attached.
3. From: _____ To: _____
The document was recorded in the United States Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

Additional documents in the chain of title are listed on a supplemental sheet.

Copies of assignments or other documents in the chain of title are attached.

NOTE: A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08.

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

9/7/04
Date

206-832-4103
Telephone number

Jerry Goad
Typed or printed name

Signature
Senior Vice President of Finance
Title

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETE D FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



AGREEMENT AND PLAN OF MERGER

dated as of September 25, 2001

among

LOUDEYE TECHNOLOGIES, INC., and

IGNITION ACQUISITION, INC.

and

ACTIVATE.NET CORPORATION

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Technology Center 2600

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of September 25, 2001 (the "Closing Date"), is entered into by and among Loudeye Technologies, Inc., a Delaware corporation ("Loudeye"), Ignition Acquisition, Inc., a Delaware corporation and a wholly-owned subsidiary of Loudeye ("Sub"), and Activate.net Corporation, a Delaware corporation ("Activate"), and, solely with respect to Sections 2.1(c), 5.2, 5.3 and 5.5 and Article VII hereof, CMGI, Inc., a Delaware corporation ("CMGI").

RECITALS

A. The Boards of Directors of Loudeye, Sub and Activate deem it advisable and in the best interests of each respective corporation and their respective stockholders that Loudeye and Activate combine their respective businesses upon the terms and conditions set forth herein;

B. The combination of Loudeye and Activate shall be effected by the terms of this Agreement through a transaction in which Sub will merge with and into Activate, Activate will become a wholly-owned subsidiary of Loudeye and the stockholders of Activate will receive a combination of (i) cash and (ii) common stock of Loudeye (the "Merger");

C. The parties intend and acknowledge that the Merger will not be treated as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder; and

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below, the parties agree as follows:

ARTICLE I THE MERGER

Section 1.1 Effective Time of the Merger.

(a) Subject to the provisions of this Agreement, a certificate of merger (the "Certificate of Merger") in such mutually acceptable form as is required by the relevant provisions of the Delaware General Corporation Law ("Delaware Law") shall be duly executed and delivered by the parties hereto and thereafter delivered to the Secretary of State of the State of Delaware for filing on the Closing Date.

(b) The Merger shall become effective upon the filing of the Certificate of Merger with the Secretary of State of the State of Delaware (the "Effective Time").

Section 1.2 Closing.

The closing of the Merger (the "Closing") will take place at 10:00 a.m., Pacific time, on the Closing Date, at the offices of Heller Ehrman White & McAuliffe, LLP, 701 Fifth Avenue, Suite 6100, Seattle, WA 98104.

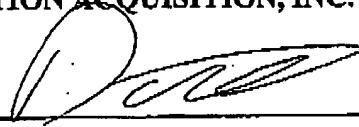
IN WITNESS WHEREOF, Loudeye, Sub and Activate have executed this Agreement and Plan of Merger as of the date first written above.

LOUDEYE TECHNOLOGIES, INC.

By: 

Title: CEO

IGNITION ACQUISITION, INC.

By: 

Title: President

ACTIVATE.NET CORPORATION

By: _____

Title: _____

CMGI, Inc. hereby executes this Agreement for the limited purpose of agreeing to and becoming bound by the provisions of Sections 2.1(c), 5.2, 5.3 and 5.5 and Article VII.

CMGI, INC.

By: _____

Title: _____

IN WITNESS WHEREOF, Loudeye, Sub and Activate have executed this Agreement and Plan of Merger as of the date first written above.

LOUDEYE TECHNOLOGIES, INC.

By: _____

Title: _____

IGNITION ACQUISITION, INC.

By: _____

Title: _____

ACTIVATE.NET CORPORATION

By: Danny K. Shepard
Title: President

CMGI, Inc. hereby executes this Agreement for the limited purpose of agreeing to and becoming bound by the provisions of Sections 2.1(c), 5.2, 5.3 and 5.5 and Article VII.

CMGI, INC.

By: _____

Title: _____

IN WITNESS WHEREOF, Loudeye, Sub and Activate have executed this Agreement and Plan of Merger as of the date first written above.

LOUDEYE TECHNOLOGIES, INC.

By: _____

Title: _____

IGNITION ACQUISITION, INC.

By: _____

Title: _____

ACTIVATE.NET CORPORATION

By: _____

Title: _____

CMGI, Inc. hereby executes this Agreement for the limited purpose of agreeing to and becoming bound by the provisions of Sections 2.1(c), 5.2, 5.3 and 5.5 and Article VII.

CMGI, INC.

By: George A. Meyer

Title: Chief Financial Officer + Treasurer

Exhibit B**ACTIVATE.NET CORPORATION
DISCLOSURE SCHEDULE**

This Disclosure Schedule is being furnished by Activate.net Corporation, a Delaware corporation ("Activate"), to Loudeye Technologies, Inc., a Delaware corporation ("Loudeye"), and Ignition Acquisition, Inc., a Delaware corporation and wholly owned subsidiary of Loudeye ("Sub"), in connection with the execution and delivery of that certain Agreement and Plan of Merger, dated as of September 25, 2001 (the "Agreement"), by and among Activate, Loudeye and Sub. Unless the context otherwise requires, all capitalized terms used in this Disclosure Schedule shall have the respective meanings assigned to them in the Agreement.

No reference in this Disclosure Schedule to any agreement or document shall be construed as an admission or indication to any party other than Loudeye or Sub that such agreement or document is enforceable or currently in effect under such agreement or document. No item of disclosure in this Disclosure Schedule relating to any possible breach or violation of any agreement, law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred.

* * *

Schedule 3.1 Organization of Activate.

(a)

The following is a list of the locations of all sales offices and other offices or facilities of Activate:

1. 1130 Rainier Avenue South, Seattle, WA 98144
2. 555 Richmond St. West, Suite 1004 and 1007, Toronto, ON M5V 3B1
3. 622 Third Avenue, 8th Floor, New York, NY 10017. Activate has entered into a Termination of Space License and Support Agreement dated as of September 28, 2001 with CMGI to terminate the Space License and Support Agreement (the "License Agreement"), dated as of January 30, 2001 by and between CMGI, Inc. and Activate.

Activate has, or recently has had, employees in Washington, California, New York, Massachusetts, Virginia and Illinois.

2. Lease Agreement, dated June 9, 1999 between 674951 Ontario Limited, and Activate.Net Canada Corporation as amended by Lease Amending Agreement, dated as of January 4, 2000, related to Canada, 555 Richmond St. West, Suites 1004 and 1007, Toronto, ON M5V 3B1 location.
3. Space License and Support Agreement, dated as of January 30, 2001 by and between CMGI, Inc. and Activate relating to 622 Third Avenue, 8th Floor, New York, NY 10017. Activate has entered into a Termination of Space License and Support Agreement dated as of September 28, 2001 with CMGI to terminate the License Agreement.
4. Equipment Lease, dated November 25, 1997 between Pitney Bowes Credit Corporation and Activate.
5. Equipment Lease, dated October 20, 2000 between Pitney Bowes Credit Corporation and Activate.

Schedule 3.7.2

Personal Property

Attached as Exhibit 3.7.2 to this Disclosure Schedule is a list of assets with an acquired book value in excess of \$5,000.

Real Property

1. 1130 Rainier Avenue South, Seattle, WA 98144. Activate is the Lessee.
2. 555 Richmond St. West, Suites 1004 and 1007, Toronto, ON M5V 3B1. Activate is the Lessee.
3. 622 Third Avenue, New York, 8th Floor, NY 10017. Activate has entered into a Termination of Space License and Support Agreement dated as of September 28, 2001 with CMGI to terminate the License Agreement.

Schedule 3.8 Proprietary Rights.

(a)

Patents

On September 18, 2001, Activate filed a Non-Provisional Patent Application based upon and claiming priority from Provisional Patent Application Nos. 60/234,046 and 60/233,513 filed on September 19, 2000 with the U.S. Patent and Trademark Office for a "Method and System for Presenting Personalized Advertisements".

Trademarks

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 09:00 AM 09/25/2001
010475827 - 3174116

**CERTIFICATE OF MERGER
MERGING
IGNITION ACQUISITION, INC.
WITH AND INTO
ACTIVATE.NET CORPORATION**

Pursuant to Section 251 of the General Corporation Law of
the State of Delaware

Ignition Acquisition, Inc., a Delaware corporation ("Ignition") and Activate.net
Corporation, a Delaware corporation ("Activate"), DO HEREBY CERTIFY AS FOLLOWS:

FIRST: That Ignition was incorporated on September 21, 2001 pursuant to the
Delaware General Corporation Law (the "Delaware Law"), and that Activate was incorporated
on March 28, 2000 pursuant to the Delaware Law.

SECOND: That an Agreement and Plan of Merger (the "Merger Agreement"),
dated as of September 25, 2001, setting forth the terms and conditions of the merger of Ignition
with and into Activate (the "Merger"), has been approved, adopted, certified, executed and
acknowledged by each of the constituent corporations in accordance with Section 251 of the
Delaware Law.

THIRD: That the name of the surviving corporation (the "Surviving
Corporation") shall be "Activate.net Corporation"

FOURTH: That pursuant to the Merger Agreement, Activate.net Corporation
shall continue its existence as the surviving corporation (the "Surviving Corporation") following
the Merger and that the Certificate of Incorporation of the Surviving Corporation is amended to
read in its entirety as set forth in Exhibit A hereto.

FIFTH: That an executed copy of the Merger Agreement is on file at the office of
the Surviving Corporation at the following address:

Activate.net Corporation
1130 Rainier Avenue South
Seattle, Washington 98144

SIXTH: That a copy of the Merger Agreement will be furnished by the Surviving
Corporation, on request and without cost, to any stockholder of any constituent corporation.

SEVENTH: That the Merger shall become effective upon filing of this Certificate
of Merger with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, each of Ignition and Activate has caused this
Certificate of Merger to be executed in its corporate name this 25 day of September, 2001.

ACTIVATE.NET CORPORATION

/s/ Dennis J. Shepard

By: Dennis J. Shepard

Its: President

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